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Zimmerman Mfg. Co. v. *Daffin*, 149 Ala. 380, 42 So. 858. If timber is removed after the period, the vendor's remedy is for breach of covenant or in trespass, but the value of the trees is not a part of the damages. Courts of equity however will not require the vendor to permit the trespass. *Peirce* v. *Finerty*, 76 N. H. 38, 76 Atl. 194. Support has been given this construction because it is claimed that no forfeiture is involved. See 17 HARV. L. REV. 411. A second view, that of the Virginia case, regards the clause as a condition precedent with title passing only to those trees cut and removed within the period. *Boisaubin* v. *Reed*, 2 Keyes (N. Y.) 323, 1 Abb. Dec. 161. This is scarcely the intention of the parties as expressed in the absolute terms of the conveyance. The Tennessee case adopted the third, and most preferable view, that the clause is a condition subsequent and that title passes subject to defeasance as to timber not removed within the time limit. *Allen & Nelsom Mill Co.* v. *Vaughn*, 57 Wash. 163, 106 Pac. 622. This construction fulfils the intention of the parties without violating the language of the instrument and avoids a situation where a legal title can only be asserted by means of a trespass.

TAXATION — GENERAL LIMITATIONS ON THE TAXING POWER — STATE TAXATION ON THE PROCEEDS OF INTERSTATE COMMERCE. — A Texas statute [ACT 30th, LEG. (1st Ex. Sess.) c. 18] imposed upon each terminal company doing business in the state "an occupation tax" "equal to one per cent of the total amount of its gross receipts from all sources whatever." This tax was stated to be in excess of all other taxes, but those paying it were to be relieved from the operation of former enactments imposing "occupation" taxes and a tax upon intangible assets. Defendant, an interstate company, contests the tax. *Held*, that the statute is constitutional. *State* v. *Houston Belt & Terminal Ry. Co.*, 166 S. W. 83 (Tex. Civ. App.).

For a discussion of this case in the light of the various United States Supreme Court holdings on the subject, see NOTES, p. 93.

WITNESSES — COMPETENCY — COMPETENCY OF A PRESIDING JUDGE AS WITNESS. — One of the presiding justices voluntarily took the stand and testified why a certain licensing committee, of which he had been a member, had referred the hearing to the body then sitting. *Held*, that the refusal of the license be affirmed. *Semble*, that the justice was not a competent witness. *Mitchell* v. *Justices of Croydon*, 30 T. L. R. 526, 20 Wkly. Notes, 225.

A judge may always testify in a cause where he is not sitting, as to the proceedings before him at another trial. *State* v. *Duffy*, 57 Conn. 525, 18 Atl. 791. But a judge cannot be required to give testimony at a trial over which he presides. *State* v. *De Maio*, 69 N. J. L. 590, 55 Atl. 644; *Reno Mill & Lumber Co.* v. *Westerfield*, 26 Nev. 332, 67 Pac. 961, 69 Pac. 899. Early English practice, however, seems to have considered a presiding judge a competent witness. *Trial of Oates*, 10 How. St. Tr. 1079, 1142; *Trial of Stafford*, 7 How. St. Tr. 1293, 1413, 1442. Subsequently doubts as to the propriety of this were expressed. See *Duke of Buccleuch* v. *Metropolitan Board*, L. R. 5 H. L. 418, 433; *Rebina* v. *Petrie*, 20 Ont. 317, 323. In America, in the absence of statutes, the weight of authority is that one of the presiding justices is not a competent witness. *Morss* v. *Morss*, 11 Barb. (N. Y.) 510. Various reasons have been given, among others, that there would be no one to swear him, that he would have to pass on the admissibility of his own evidence, and that he could not be held for contempt. *Baker* v. *Thompson*, 89 Ga. 486, 15 S. E. 644; *Martland* v. *Zanga*, 14 Wash. 92, 44 Pac. 117; *People* v. *Miller*, 2 Park. Cr. (N. Y.) 197. But statutes in many states allow the judge to testify. See CHAMBERLAYNE, EVIDENCE, p. 747. It is then at his discretion to proceed, or to suspend the trial until another judge can be secured. *State* v. *Houghton*, 45 Ore. 110, 75

Pac. 887. The principal case, it is true, is confessedly based on no direct authority in England. But, in general, assumption of the dual capacity of judge and witness seems absolutely improper. But see WIGMORE, EVIDENCE, § 1909.

WITNESSES — PRIVILEGED COMMUNICATIONS — PHYSICIAN: WAIVER BY ALLOWING ONE OF SEVERAL PHYSICIANS TO TESTIFY. — The prosecutrix permitted one of three physicians who had treated her for the same trouble at about the same time to testify concerning the nature of her ailment. The defense then offered, over the objection of the state, the testimony of the other two physicians on the same point. *Held*, that the privilege had been waived. *State* v. *Long*, 165 S. W. 748 (Mo.).

The court takes the position that by permitting one of her physicians to testify as to the nature of her ailment, the patient abandoned her privilege as to all physicians who treated her for the same trouble. It is true that by allowing his physician to testify, the patient waives his privilege as to that physician at this and probably at subsequent trials. *Marquardt* v. *Brooklyn Heights R. Co.*, 126 App. Div. 272, 110 N. Y. Supp. 657; *McKinney* v. *Grand Street P. P. & F. R. Co.*, 104 N. Y. 352, 10 N. E. 544. And calling one of several consulting physicians will work a waiver of the privilege as to all present at the consultation. *Morris* v. *New York, O. & W. Ry Co.*, 148 N. Y. 88, 42 N. E. 410. None of these cases, however, justifies the result reached in the principal case. The mere preservation of secrecy is not the sole object of the privilege, else the courts would not generally agree that the patient may himself make public the nature of his ailment without thereby waiving the privilege. *McConnell* v. *City of Osage*, 80 Ia. 293, 45 N. W. 550. *Cf. Epstein* v. *Pennsylvania Ry. Co.*, 250 Mo. 1, 156 S. W. 699. Its true purpose is to protect confidential communications between physician and patient. The effective protection of such confidences requires that each physician, or set of physicians, be considered a distinct unit, and that a waiver of the privilege as to one should not prevent its assertion to prevent the disclosure of confidential communications to another. The weight of authority is to this effect, and opposed to the principal case. *Pennsylvania Mutual Life Ins. Co.* v. *Wiles*, 100 Ind. 92; *Barker* v. *Cunard S. S. Co.*, 91 Hun 495, 36 N. Y. Supp. 256. The privilege in question has been severely criticised, and a logical application of it may sometimes work injustice. See WIGMORE, EVIDENCE, § 2380; 10 MEDICO-LEGAL JOURNAL, 33. But the remedy in such case lies with the legislature, not in an arbitrary destruction of the privilege by the courts. See *Renihan* v. *Demien*, 103 N. Y. 573, 580.

BOOK REVIEWS.

HANDBOOK OF THE LAW OF MUNICIPAL CORPORATIONS. By Roger W. Cooley, LL.M. St. Paul: West Publishing Co. 1914. pp. xii, 711.

In this book Professor Cooley has gathered together and placed in readable form the ordinary things about municipal corporations. It is a good book, with the merits and some defects found in the books of its class: clear statement of elementary principles, full citation of cases, not much discussion and little attempt to develop fundamental principles or to criticise decisions. Nice discriminations are not to be expected, and contradictory statements are sometimes found; but frequent references to other treatises, and especially to Dillon's standard work, show that the author usually stands on safe ground.